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FEDERAL ENERGY
REGULATORY COMMISSION

January 4, 2001

Via Hand Delivery

Mr. David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Avista Corporation; Bonneville Power Administration; Idaho
Power Company; et al.; Docket No. RT01-35-000**

Dear Secretary Boergers:

Please find enclosed for filing an original and fourteen copies of the Reply of Northwest IPPs/Marketers Group.

Please date stamp the enclosed extra copies of this filing and return them to the waiting messenger. Please feel free to contact me at (202) 628-1700 if you have any questions about this filing.

Very truly yours,


Marybeth Magee

Enclosures

cc: Official Service List

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FEDERAL ENERGY
REGULATORY COMMISSIONUNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

| | | |
|------------------------------------|---|------------------------|
| Avista Corporation; |) | |
| Bonneville Power Administration; |) | |
| Idaho Power Company; |) | Docket No. RT01-35-000 |
| The Montana Power Company; |) | |
| Nevada Power Company; |) | |
| PacifiCorp; |) | |
| Portland General Electric Company; |) | |
| Puget Sound Energy, Inc.; and |) | |
| Sierra Pacific Power Company. |) | |

**REPLY OF NORTHWEST IPPS/MARKETERS GROUP TO RTO FILING
UTILITIES' AMENDED SUPPLEMENTAL COMPLIANCE FILING AND
REQUEST FOR DECLARATORY ORDER,
AND TO RTO FILING UTILITIES' ANSWER TO MOTIONS TO CONSOLIDATE
AND REQUEST FOR LEAVE TO FILE ANSWER TO PROTESTS**


The Northwest IPPs/Marketers Group¹ filed a Motion to Intervene and Protest and Motion to Consolidate in this proceeding on November 20, 2000 (the "Intervention and Protest").

I. Introduction

On December 1, 2000, Avista Corporation, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, PacifiCorp and Puget Sound Energy, Inc. (collectively, the "Concurring Utilities") filed in this docket an Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000 (the "Amended Supplemental Compliance Filing"). The Amended Supplemental Compliance Filing includes an amended form of Transmission Operating Agreement. The Northwest

¹Participants in the Northwest IPPs/Marketers Group include: Calpine Corporation, the Cogeneration Association of California; the Cogeneration Coalition of Washington; Duke Energy North America, LLC; Dynegy Power Marketing, Inc.; National Energy Systems Company; Nevada Independent Energy Coalition; PG&E National Energy Group, Inc.; PPL EnergyPlus, LLC; PPL Montana, LLC; Reliant Energy Services, Inc.; and TransAlta Energy Marketing (U.S.), Inc.

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IPPs/Marketers Group believes that several provisions of the Amended Supplemental Compliance Filing warrant comment.

On December 5, 2000, Avista Corporation, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (collectively, the "RTO Filing Utilities") filed in this docket an Answer to Motion to Consolidate and Request for Leave to File Answer to Protests (the "RTO Filing Utilities Answer"). In the RTO Filing Utilities Answer, the RTO Filing Utilities oppose the motion of the Northwest IPPs/Marketers Group to consolidate this proceeding with the TransConnect Order 2000 compliance proceeding (Docket No. RT01-15), and respond to selected portions of the Intervention and Protest as well as the protests of other parties. The Northwest IPPs/Marketers Group believes that the Commission would benefit from this response to the RTO Filing Utilities Answer, and requests waiver of Commission Rule 213 to the extent it would otherwise prohibit a reply to the RTO Filing Utilities Answer.

II. Summary

This proceeding is inextricably connected to the TransConnect Order 2000 compliance proceeding in Docket No. RT01-15. The RTO Filing Utilities themselves acknowledge this connection. An appropriate assessment of whether RTO West will satisfy the requirements of Order 2000 requires a concurrent examination of both filings in a single proceeding. If, nonetheless, the Commission determines to keep the dockets separate, it should move rapidly to identify the specific determinations – such as facilities inclusion, interconnection, tariffs, and pricing – that it intends to make in the context of each proceeding.

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The implementation now of an independent Board of Trustees to oversee the remainder of RTO West's development would provide a strong foundation for a truly independent RTO. Given the extended period that will be required to establish RTO West, such a process is not likely to delay the RTO's commencement of commercial operations.

The Commission should reject the request of Nevada Power Company ("Nevada"), Portland General Electric Company ("PGE") and Sierra Pacific Power Company ("Sierra") to include an analysis of export fees as part of the RTO Filing Utilities' financial modeling of transfer charges. In addition, the Commission should reject certain provisions of the proposed form of Agreement Limiting Liability Among RTO West Participants (the "RTO West Liability Agreement") relating to the damages required to be paid for wrongful dispatch orders of the RTO, and require that the RTO Filing Utilities substitute language that will provide for a more reasonable and realistic measure of damages. Finally, the Commission should reject the Concurring Utilities' efforts to amend Section 4.2.1 of the Transmission Operating Agreement, and add new Section 5.1.2.1 to the Transmission Operating Agreement, for the purpose of further isolating from RTO West's operational control facilities that should clearly comprise part of the RTO West Controlled Transmission Facilities.

III. This Proceeding Should Be Consolidated With The TransConnect Proceeding

Six of the nine Filing Utilities (the "TransConnect Applicants") plan to form an independent transmission company, TransConnect LLC (the "ITC"), to which the six will transfer ownership of certain of their transmission facilities. The TransConnect Applicants have, in a separate docket (Docket No. RT01-15), asked the Commission to determine that the organization meets the independence standard of Order 2000, and is eligible to engage in performance-based ratemaking and to perform planning functions on behalf of the RTO. The

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ITC is proposed to execute a form of Transmission Operating Agreement transferring to the RTO operational control over the ITC's transmission facilities.

The RTO Filing Utilities oppose consolidation of the RTO West and ITC Order 2000 compliance proceedings. They assert that the two proceedings are "far from identical or overlapping," and argue that consolidating the proceedings would delay the ultimate formation of RTO West. RTO Filing Utilities Answer at 5. However, notwithstanding the RTO Filing Utilities' claims, there is extensive overlap between the RTO West and ITC proceedings. The RTO Filing Utilities Answer itself acknowledges this overlap:

In their October 16, 2000 filing, the TransConnect Applicants also address certain functions that they envision TransConnect undertaking within the RTO West framework. However, the Transmission Operating Agreement contains provisions that relate to these functions. Thus, these provisions are appropriately addressed in this proceeding.

RTO Filing Utilities Answer at 5-6. The TransConnect Applicants similarly recognize the overlap between the RTO West and ITC proceedings:

Applicants . . . recognize that given there is still uncertainty as to the final version of the RTO West planning and rate provisions, more conditional and preliminary guidance with regard to the functions the ITC proposes to undertake may be appropriate.

TransConnect Applicants Answer to Motions to Consolidate, Protests, and Comments and Request for Waiver, filed on December 5, 2000 in Docket RT01-15, at 8.

There is an intimate relationship between the RTO West and ITC Order 2000 compliance proceedings. Many of the same issues – such as interconnection standards, the nature and extent of facilities under the control of RTO West, and transmission tariffs – will inevitably be required to be addressed in the context of each proceeding. It is therefore in the best interests of all parties for the Commission to consolidate the two proceedings into one docket. If, nonetheless, the Commission determines to maintain the filings in two separate

dockets, the Commission should expeditiously issue an order identifying the specific determinations that it intends to make in the context of each proceeding. Furthermore, in the event that the Commission determines to maintain the RTO West and ITC compliance filings in separate proceedings, the Commission should ensure that the pace of the ITC proceeding is not permitted to impede the progress of the formation of RTO West.

IV. Further Development Of RTO West Should Be Pursued Under The Oversight Of An Independent Board

The Northwest IPPs/Marketers Group recommends that the first full Board of Trustees of RTO West be seated at this point in the creation of the RTO, in order that the independent board can oversee the further development of the RTO. We believe that the early implementation of an independent board (and, along with it, the RTO West Board Advisory Committee) will facilitate the formation of an RTO satisfying the requirements of Order 2000, and will significantly enhance the RTO's long-term prospects for success.

The RTO Filing Utilities assert that putting an independent board in place at this time would unduly delay formation of RTO West. RTO Filing Utilities Answer at 11-14. However, the RTO Filing Utilities have previously acknowledged, in their Supplemental Order 2000 Compliance Filing filed in this docket on October 23, 2000, that their consultants have determined that they cannot implement an RTO by December 2001. Furthermore, the RTO West Stage 2 filing is not scheduled to be made until the late spring or early summer of 2001. If the board selection process were initiated now, it could be completed prior to finalization of the RTO West Stage 2 filing, and would permit the independent board of the RTO to resolve any issues that cannot be resolved by consensus in the work groups, and to review, revise and approve the final forms of the Stage 2 filings. In the interim, while the board selection process is underway, the various Stage 2 work groups could proceed with the

required analysis, discussion and document preparation. As a consequence, the implementation now of an independent board would not delay RTO West's commencement of commercial operations. And even if such implementation were to result in some modest delay in the RTO's commercial operation date, the disadvantages of any such delay would be far outweighed by the benefits that the independent board would bring to the RTO formation process.

V. Any Further Consideration of Export Fees Should Be Rejected

In the Amended Supplemental Compliance Filing, the Concurring Utilities request that the Commission reject the application of Nevada, PGE and Sierra for an analysis of export fees as part of the RTO Filing Utilities' financial modeling of transfer charges. Amended Supplemental Compliance Filing at 4-5. The Northwest IPPs/Marketers Group strongly supports the Concurring Utilities' request. The Commission should reaffirm to Nevada, PGE and Sierra that transaction-based allocation of the sunk costs of the transmission grid through export fees would be contrary to Order 2000's RTO pricing and seams elimination goals.

VI. The Agreement Limiting Liability Imposes Unreasonable Limitations On Recovery By Parties Damaged By Wrongful Dispatch Orders Of The RTO

The RTO Filing Utilities Answer responds at considerable length to various intervenors' criticisms of the provisions of the RTO Filing Utilities' proposed form of RTO West Liability Agreement relating to damages for wrongful dispatch orders of the RTO. RTO Filing Utilities Answer at 32-36. In particular, the RTO Filing Utilities assert that:

Instead of a speculative measure of "lost opportunity cost" for Wrongful Dispatch Orders [the RTO West Liability Agreement] substitutes an objective measure of damage as measured by reference to the Mid-Columbia Dow Jones daily on-peak or off-peak price less described costs. The Filing Utilities further submit that each generator is in a better position than RTO West to anticipate and insure against

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any extraordinary damages. For these reasons, the liability limitations in the RTO West Liability Agreement represent an appropriate balance of risks between RTO West and individual generators.

RTO Filing Utilities Answer at 34-35.

Notwithstanding the RTO Filing Utilities' attempts to justify the RTO West Liability Agreement's damages provisions, there are several problems with the provisions of the RTO West Liability Agreement relating to damages for wrongful dispatch orders of the RTO. First, Section 8.2.2.2 of the RTO West Liability Agreement proposes to deduct from the payment received by a damaged party "a reasonable allocation of the overhead, depreciation and fixed costs allocable to the generation of electric energy of such generator." This deduction is inappropriate. In establishing the compensation for an interrupted transaction, the formula correctly includes the incremental cost of replacement power, but what should be deducted from the formula is the decremental savings of the generator (since it did not have to generate the power), rather than fixed costs. The deduction should not include any component of fixed costs since the occurrence or non-occurrence of the transaction will not affect the seller's fixed costs. Section 8.2.2.4 of the agreement contains the same mistake.

Second, Section 8.2.2.4 of the RTO West Liability Agreement, and the agreement's definition of "Replacement Power Cost," propose to use a deemed price of "125% of the applicable Mid-Columbia Dow Jones daily on-peak or off-peak index price (until such time as a published hourly Northwest power price index is established and available)." This is an inadequate surrogate for the market price of replacement power. The RTO will, from its first day of operation, establish a real-time balancing energy price in each congestion zone. That price, plus the amount of any penalties which the RTO may impose on a Scheduling Coordinator that is unable to deliver energy due to the wrongful dispatch instruction, is more truly reflective of the injured Scheduling Coordinator's damages (i.e., the Scheduling

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Coordinator could, if prevented from generating, simply do nothing and the RTO would provide the imbalance energy at the RTO's real-time balancing energy price, plus possible penalties).

Finally, the party damaged by a wrongful dispatch order will generally not be a generator but instead a Scheduling Coordinator. Generators will not, per se, make any real-time operating decisions or submit schedules. These will be duties of the Scheduling Coordinators. As a consequence, the RTO West Liability Agreement should be revised to reflect the application of its provisions to Scheduling Coordinators rather than generators.

VII. The Proposed Amendments To Section 4.2.1 Of The Transmission Operating Agreement, And The Proposed Addition Of Section 5.1.2.1 To The Transmission Operating Agreement, Would Further Exacerbate The RTO West Facilities Exclusion Problem

The Northwest IPPs/Marketers Group opposes the revisions proposed by the Concurring Utilities to Section 4.2.1 of the Transmission Operating Agreement. Those amendments only reinforce the facilities exclusion problem addressed at considerable length in the Intervention and Protest. Intervention and Protest at 28-31. By categorizing as distribution facilities certain of the facilities over which wholesale transactions will take place, some of the RTO Filing Utilities propose to retain authority over generator interconnections with such facilities. This effort to restrict the authority of RTO West is in direct contravention of the requirements of the Commission's RTO regulations, which provide that an RTO "must have the authority to review and approve requests for new interconnections." 18 C.F.R. Part 35(k)(1)(i). It contravenes the Commission's established jurisdiction over wholesale generator interconnections, and it makes a mockery of Order 2000's vision of uniform and nondiscriminatory RTO-administered interconnection standards. The Commission should reject the proposed amendments to Section 4.2.1 of the

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Transmission Operating Agreement, and should instead require that the RTO Filing Utilities provide that all facilities involved in the provision of Commission-jurisdictional services shall be governed by the RTO's interconnection requirements.

The Northwest IPPs/Marketers Group also opposes the Concurring Utilities' proposal to add new Section 5.1.2.1 to the Transmission Operating Agreement. This new section would isolate from the operational control of RTO West facilities that should clearly be included within RTO West Controlled Transmission Facilities, and would exacerbate the facilities exclusion problem addressed at length by the Northwest IPPs/Marketers Group in the Intervention and Protest. RTO West must exercise authority over all Commission-jurisdictional services within the RTO West area. The Commission should reject any further efforts on behalf of the Concurring Utilities to limit the facilities that should properly be under the control of RTO West, and should instead direct the Concurring Utilities to revise the definition of RTO West Controlled Transmission Facilities in a manner that is consistent with Orders 888 and 2000.²

The revisions proposed to the Transmission Operating Agreement in the Amended Supplemental Compliance Filing have done little if anything to address the concerns raised by the Northwest IPPs/Marketers Group in the Intervention and Protest. The Northwest IPPs/Marketers Group reiterates those concerns, and reiterates its request that the Commission grant the relief requested in the Intervention and Protest.

² In their Intervention and Protest, the members of the Northwest IPPs/Marketers Group proposed that the definition of "RTO West Controlled Transmission Facilities" be amended to read as follows: "RTO West Controlled Transmission Facilities" mean any and all electric facilities (other than generation facilities) that are used in the provision of Commission-jurisdictional services, with the exception of facilities (i) over which less than 5% of the flows are used for Commission-jurisdictional services and (ii) which do not affect the transfer capabilities of FTR paths. Intervention and Protest at 12.

VIII. Requested Relief

For all the reasons set forth above, the members of the Northwest IPPs/Marketers Group request that the Commission:

(1) order the consolidation of this proceeding with the TransConnect ITC Order 2000 compliance proceeding;

(2) direct RTO West to form and seat its first full and independent Board of Trustees;

(3) direct that all subsequent RTO West filings, including the RTO's Stage 2 filings, be prepared and filed under the oversight and direction of the first full Board of Trustees of RTO West;

(4) reject the request of Nevada, PGE and Sierra to direct the Concurring Utilities to include an analysis of export fees in the Concurring Utilities' Stage 2 financial modeling;

(5) require that the RTO West Liability Agreement be amended as set forth above, to provide for more reasonable and realistic compensation for damages resulting from wrongful dispatch orders of RTO West;

(6) reject the Concurring Utilities' proposal to amend Section 4.2.1 of the Transmission Operating Agreement and add Section 5.1.2.1 to the Transmission Operating Agreement; and

(7) grant the additional relief requested in the Intervention and Protest, and such other and further relief as the Commission deems proper.

Respectfully submitted,

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*On behalf of the Northwest IPPs/Marketers
Group*

Dated: January 4, 2001

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Reply Of Northwest IPPs/Marketers Group To RTO Filing Utilities' Answer To Motions To Consolidate And Request For Leave To File Answer To Protests; Reply Of Northwest IPPs/Marketers Group To RTO Filing Utilities' Amended Supplemental Compliance Filing And Request For Declaratory Order this 4th day of January, 2001 upon each person designated on the official service list compiled by the Secretary in this proceeding.


Marybeth B. Magee